

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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DISTRICT COURT
DISTRICT OF RHODE ISLAND

FARM FAMILY CASUALTY
INSURANCE COMPANY

VS.

C.A. NO. 14-

RIVERS PAVING, INC. and
NORMAN RIVERS, JR.

CA 14 - 153

**COMPLAINT FOR DECLARATORY RELIEF
AND JURY TRIAL DEMAND**

Plaintiff Farm Family Casualty Insurance Company ("Farm Family"), by and through its attorneys, for its Complaint for Declaratory Relief, hereby alleges and avers as follows:

Nature of Action

1. This Complaint is a request for a declaratory judgment pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. Proc. 57 declaring that no uninsured motorist coverage is afforded under the Plaintiff's insurance policy for claims asserted by Defendant as a result of alleged injuries to Norman Rivers, Jr. on or about November 20, 2012 in Coventry, Rhode Island. The claims are excluded under the terms, conditions and/or exclusions of the subject insurance policy.

Jurisdiction and Venue

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 in that diversity of citizenship exists between the Plaintiff and the Defendants and the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(1) and (2) as the Defendants' businesses are located in Coventry, Rhode Island; and the incident giving rise to claims or potential claims against the Defendants allegedly occurred in Coventry, Rhode Island.

Parties

4. Farm Family Casualty Insurance Company ("Farm Family") is an insurance company organized under the laws of the State of New York with its principal place of business in Albany, New York.

5. Rivers Paving, Inc. ("Rivers Paving") is a Rhode Island corporation with its principal place of business at 5 Nichole Lane in Coventry, Rhode Island.

6. On information and belief, Norman Rivers, Jr. ("Rivers") is an individual residing at 6 Nichole Lane in Coventry, Rhode Island and, further, is the president and an employee of Rivers Paving, Inc.

Background

7. Defendants Rivers Paving and Rivers have asserted that Farm Family owes Rivers uninsured motorist insurance benefits pursuant to policy of insurance issued by Farm Family to Rivers Paving for injuries sustained by Rivers in an incident which occurred on November 20, 2012 in Coventry, Rhode Island.

8. Defendants allege that Rivers was struck and injured by a motor vehicle that was uninsured at the time of the incident. Defendants further allege that Farm Family issued a policy of insurance to Rivers Paving policy number 3802C0329-01 effective date March 27, 2012 which provides uninsured motorist coverage to its insured's in the event that they are injured in a motor vehicle accident by an uninsured driver.

9. At the time of the incident, the motor vehicle that struck Rivers was owned and operated by Chris Gadoury of Coventry, Rhode Island. Mr. Gadoury did in fact have a policy of insurance issued by GMAC insurance policy number 2001582359. However, GMAC Insurance Company has denied coverage to Mr. Gadoury for injuries he caused in this incident due to the fact that Mr. Gadoury was in the employ of Santoro Pizza at the time of the incident.

10. Santoro's Pizza, upon information and belief, is a Rhode Island Corporation doing business in the State of Rhode Island was in fact an employer of Mr. Gadoury at the time of the accident. Santoro's Pizza also had an effective insurance policy with Nationwide Insurance. Nationwide Insurance Company has denied coverage due to the fact that Mr. Gadoury was operating his own vehicle.

11. Rivers alleges that on said date he was directing a truck owned by Rivers Paving, Inc. and was standing behind said vehicle when a motor vehicle owned and operated by a Chris Gadoury negligently struck him causing him personal injuries.

The Insurance Policy

12. Farm Family issued to Rivers Paving a business auto policy, policy number policy number 3802C0329-01 effective date March 27, 2012. A certified copy of the policy is attached hereto as "Exhibit A."

13. The policy includes a Rhode Island Uninsured Motorist Coverage Endorsement.

14. The Policy provides, in pertinent part, as follows:

B. WHO IS AN INSURED

If the Named Insured is designated in the Declarations as:

1. An individual.....

2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds."

a. Anyone "occupying" a covered "auto" or a temporary substitute for a covered "auto". Any "auto" that is owned by the Named Insured is not a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.

Count I – Declaratory Relief

15. Plaintiff, Farm Family asserts and re-alleges Paragraphs 1 through 14 as if fully re-written herein.

16. An actual controversy exists between the Plaintiff and Defendants concerning their respective rights, duties and obligations under the Policy.

17. The Policy provides no coverage for the claims that have been made by Rivers arising out of a motor vehicle accident which occurred on November 20, 2012, as Rivers was not occupying a vehicle at the time of the incident and therefore was not an insured as defined by the policy.

18. Any injuries alleged by Rivers were not the result of an injury sustained by an insured within the meaning of the Policy, and all claims by Rivers are specifically not covered pursuant to that definition of the insured.

19. Farm Family is entitled to a Declaratory Judgment that it owes no coverage to Rivers in connection with his claim.

WHEREFORE, Farm Family respectfully requests that the Court declare that Farm Family has not obligation to Rivers as he was not an insured as defined by the Policy and grants such other and further relief as the Court deems just and proper.

Plaintiff hereby demands a jury trial on all claims so triable.

Farm Family Casualty Insurance Company
By its attorneys,



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Dated: